

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**(Sparks, Nevada)**

**K MART CORPORATION,  
SPARKS DISTRIBUTION CENTER**

**Employer**

**and**

**Case 32-RC-4622**

**OPERATING ENGINEERS LOCAL  
NO. 3, INTERNATIONAL UNION OF  
OPERATING ENGINEERS, AFL-CIO**

**Petitioner<sup>1</sup>**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The name of the Petitioner was changed to reflect its affiliation with the AFL-CIO.

<sup>2</sup> The record in this case consists of a stipulation entered into by the parties and approved by the undersigned and briefs subsequently filed by the parties. The parties waived their right to a hearing in this case. Pursuant to the terms of the stipulation the parties agreed that since the issues herein are identical to the issues presented in a prior case involving these parties, Case 32-RC-4305, the instant matter would incorporate the Decision and Direction of Election that issued in that case on July 16, 1997, hereinafter referred to as the Decision, as well as the record in that proceeding.

2. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>3</sup>

All full-time and regular part-time skilled maintenance employees and general maintenance employees employed by the Employer at its Sparks, Nevada Distribution Center<sup>4</sup>; excluding all other employees, warehouse employees, merchandising handling employees, office clerical employees, guards, and supervisors as defined in the Act.

There are approximately 26 employees in the bargaining unit.

### **DIRECTION OF ELECTION**

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<sup>3</sup> The bargaining unit sought by Petitioner in this case is identical to that which I found appropriate in Case 32-RC-4305. As in that earlier case, the Employer contends herein that the petitioned-for maintenance unit is not an appropriate unit, and that the only appropriate unit would be a wall-to-wall unit of all warehouse employees. Since according to the parties' stipulation it is undisputed that the facts concerning the bargaining unit in the instant matter are no different than they were at the time the Decision and Direction of Election issued in Case 32-RC-4305, I reaffirm my earlier finding that the petitioned-for unit is appropriate.

<sup>4</sup> In its brief the Employer refers to Macy's West Inc., 327 NLRB No. 201 (1999) where a separate unit of maintenance employees was, according to the Employer, found appropriate on grounds not present herein and therefore, the Employer argues, is distinguishable from the instant case. The Employer points to the minimal evidence of transfers in or out of the maintenance department in Macy's West whereas in the instant matter 8 out of 31 employees transferred into the maintenance department from general warehouse jobs. However, the record showed that in all cases the transfers were permanent and, apart from the disciplinary demotions, voluntary as well and there is no evidence of any temporary transfers between departments. It is well established that permanent transfers weigh less heavily than temporary interchange in assessing community of interest. See Ore-Ida Foods, 313 NLRB 1016, 1020 fn. 4 (1994). Also, the fact that the wage scale of the general maintenance employees herein is comparable to that of the general warehouse and loss prevention employees is an insufficient basis to negate their distinct community of interest with the skilled maintenance employees but separate from the general warehouse and loss prevention employees given their separate supervision and unique skills as well as the other factors noted in the earlier Decision in Case 32-RC-4305.

The parties stipulated that the classifications of maintenance coordinator and parts coordinator are properly included in the unit.

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>5</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by, **OPERATING ENGINEERS LOCAL NO. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care 359 Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before, June 16, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National

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<sup>5</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by June 23, 1999.

Dated at Oakland, California this 9<sup>th</sup> day of June, 1999.

/s/ James S. Scott

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James S. Scott  
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National Labor Relations Board  
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